BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2013-392-E

IN RE: Joint Application of Duke Energy Carolinas, LLC and North Carolina Electric Membership Corporation for a Certificate of Environmental Compatibility and Public Convenience and Necessity for the Construction and Operation of a 750 MW Combined Generating Plant Near Anderson, SC.

RETURN
to
OBJECTION

INTRODUCTION

Invenergy Thermal Development LLC, (hereinafter as, "Invenergy"), filed a Petition to Intervene in this matter on December 3, 2013. Invenergy's Petition to Intervene was accepted by this Commission by correspondence dated, December 3, 2013, subject to challenge. The Applicants filed an Objection with this Commission on December 9, 2013. The grounds for their objection were that, (**i**) "Invenergy lacks standing to intervene in this matter" and (**ii**) "public policy weighs against intervention."Applicants' objection is without merit and pretextual and intended to improperly preclude Invenergy from participation in this Docket. Notably, Applicants object only to Invenergy's intervention and not that of any other Intervenor. Of those entities intervening, Invenergy alone was a participant in Duke Energy Carolinas, LLC's (hereinafter as, "Duke") Request for Proposal process, which Duke claims supported its decision to self-build the proposed Combined Cycle Station. This Commission should be alarmed by Duke's attempt to silence the one Intervenor with direct experience in the process Duke used in making a decision that will ultimately impact South Carolina ratepayers. Invenergy's intervention is intended to bring sunshine and transparency into this Commission's review of this matter and Duke's decision to self-build the proposed Combined Cycle Station. Invenergy agrees with the Applicants' admission in the first sentence of its argument (Objection, Page "2") that the granting or denial of a Petition to Intervene is within the sound discretion of this Commission. Because Invenergy is the sole, knowledgeable participant from Duke's RFP seeking to intervene herein, this Commission should find, in its sound discretion, that Invenergy has standing to participate in this Docket and the public interest favors this Commission's approval of Invenergy's intervention in Docket 2013-392-E. **Invenergy's intervention is consistent with this Commission's long standing policy**, "…in encouraging maximum public participation in issues before the Commission, and [Intervention] should be allowed so that a full and complete record… can be developed." (See, Order No.: 2005-725, in Docket No.: 2005-270-G, dated December 16, 2005).

ARGUMENT

Applicants Admit- Intervention Decision is in Commission's Sound Discretion.

Applicants admit on page "2" of their Objection that the granting or denial of Invenergy's Petition to Intervene in this Docket is in the sound discretion of this Commission.

The case cited by Applicants, Ex parte Government Employee's Ins. Co., 373 S.C. 132, 644 SE 2d 699 (2007), further states, "**Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties.**" (emphasis supplied), (internal citations omitted). Because Invenergy is the sole participant in Duke's RFP, (which Duke claims is justification for Duke's decision to self-build the Combined Cycle Station), Invenergy is in a unique position to assist this Commission in its review of this matter.

Invenergy's intervention is consistent with this Commission's long standing policy, "…in encouraging maximum public participation in issues before the Commission, and [Intervention] should be allowed so that a full and complete record… can be developed." (Order No.: 2005-725, in Docket No.: 2005-270-G, dated December 16, 2005).

Commission's Requirement for Intervention.

The broad parameters of the Commission Rule on Intervention only require (**i**) grounds of interest (**ii**) facts relied on and (**iii**) relief sought, (R. -103-825 Petitions). Invenergy's Petition to Intervene complies with all three of these broad requirements.

The Applicants Seek a Rigid Formulaic Rule for Intervention Before This Commission.

In Smiley v. South Carolina Department of Health and Environmental Control, 374 S.C. 326, 649 SE 2d 31 (2007), the Supreme Court of South Carolina found that Smiley was entitled to a relaxed view of standing before a South Carolina agency. Smiley's recreational and casual use of a beach, was sufficient to give Smiley standing to intervene in a matter concerning, "beach sand scraping." The Smiley Court found that the Office of Coastal Resource Management and the South Carolina Court of Appeals improperly imposed a harsh interpretation of standing upon Smiley and the Smiley Court reversed both the OCRM and the Court of Appeals.

However, a Previous Petition to Intervene From Duke, Met no Such Rigid Requirement.

As recently as September 11, 2012, counsel for Duke sought to intervene in a Docket before this Commission, with the following general language, "…they [Duke] have a material interest in the outcome of this proceeding as the order issued in this docket establishes a precedent that could impact PEC and DEC's business interests." (Petition to Intervene of Duke Carolinas, LLC, and Progress Energy Carolinas, Inc., dated September 11, 2012, in Docket No.: 2011-479-E).

For Almost Thirty Years, this Commission has Favored Liberal Intervention.

Order No. 84498, issued in Docket No.: 84-10-C, by this Commission on June 8, 1984, held that, "The Commission is of the opinion, and so finds, that it is in the public interest to grant the relief requested in the Petition so that the Commission may consider all of the relevant information in the instant proceeding.", (Page "2" of Order No. 84498).

Also, Order No.: 1999-20, issued in Docket No. 95-835-C, by this Commission on January 8, 1999, held that, "…SECCA's intervention out-of-time will aid us in developing a full record in this case…", (Page "2" of Order No.: 1999-20).

Guidance from South Carolina Supreme Court on Intervention.

The Supreme Court of South Carolina has held, "Each case [on Intervention] will be examined in the context of its unique facts and circumstances." Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 SE 2d 712 (1990).

Duke's Standard Argument Against Intervention, that ORS will Ensure the Public Interest.

In, Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 SE 2d 712 (1990), the South Carolina Supreme Court has provided guidance, "It has been held that a governmental entity's representation of a private party's interests does not constitute adequate representation." (internal citations omitted).

This Commission Previously Overruled Duke's Objection to a Noncustomer's Intervention.

In Order No.: 2011-264, issued in Docket No. 2011-20-E, by this Commission on April 6, 2011, this Commission overruled Duke's objection to an intervention by a **noncustomer of Duke**, and allowed the noncustomer to participate in Duke's Docket. It is interesting to note that, Duke made the same argument in their unsuccessful objection, as in the instant objection, (Objection, page "4"). Namely, that ORS could properly represent Mr. Clements.

CONCLUSION

Based on the foregoing (**i**) this Commission's discretion (**ii**) applicable case law (**iii**) the Regulations of this Commission (**iv**) the Commission's long standing policy, "…in encouraging maximum public participation in issues before the Commission, and [Intervention] should be allowed so that a full and complete record… can be developed." and (**v**) the previous Orders of this Commission on Intervention, Invenergy should be allowed to intervene and participate fully in this proceeding.

Respectfully Submitted,
/S/

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